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9 CHILDREN'S HEALTH DEFENSE

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 CHILDREN'S HEALTH DEFENSE,

14 Plaintiff,

15 v.

16 FACEBOOK, INC., et al.,

17 Defendants.  
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Case No. 3:20-cv-05787-SI

**PLAINTIFF'S MOTION TO SHORTEN  
TIME TO HEAR ITS MOTION FOR  
LEAVE TO SUPPLEMENT THE SECOND  
AMENDED COMPLAINT; ROGER TEICH  
DECLARATION; [PROPOSED] ORDER**

Civil L.R. 6-3

**NOTICE OF MOTION TO SHORTEN TIME  
AND TO SERVE A SUPPLEMENTAL PLEADING**

PLEASE TAKE NOTICE THAT Plaintiff Children’s Health Defense’s (“CHD”) hereby moves for an Order pursuant to Civil L.R. 6-3(d) to shorten time to hear CHD’s motion, filed herewith, for leave to supplement its Second Amended Complaint (“SAC”).

**STATEMENT OF REQUESTED RELIEF**

Subsequent to the filing of CHD’s Second Amended Complaint and to the filing of CHD’s opposition to Defendants’ Motions to Dismiss, Defendants Facebook and Zuckerberg have engaged in significant further acts of retaliation and censorship against CHD and in significant further acts of joint participation with the federal government to suppress CHD’s constitutionally protected speech. Because these new facts are material to this case, CHD has respectfully requested by separate motion, pursuant to Fed. R. Civ. P. 15(d), permission to supplement the pleadings. Pursuant to Civil L.R. 6-3(d), CHD hereby moves to shorten time so that this Rule 15(d) motion may be heard along with Defendants’ Motions to Dismiss at the hearing already scheduled on March 23, 2021, at 11:00 a.m., in Courtroom 1 of the U.S. District Court for the Northern District of California. The Court may in its discretion set an expedited briefing schedule by which Defendants’ oppositions to the Rule 15(d) motion are due by March 17, 2021, and Plaintiff’s replies by March 19, 2021.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**FACTUAL STATEMENT**

On December 21, 2020, Defendants filed their Motions to Dismiss Plaintiff CHD’s Second Amended Complaint. (Dkts. ##68-69.) On February 5, 2021, CHD filed its Oppositions thereto. (Dkts. ##70-71.) These Motions to Dismiss, and CHD’s Opposition thereto, will be heard by this Court on March 23, 2021, at 11:00 a.m. in Courtroom 1 of the U.S. District Court for the Northern District of California. (Dkt. #72.)

As this Court is aware, CHD’s allegations include claims that Defendants have violated CHD’s free speech rights under the First Amendment; retaliated against CHD for bringing this action;

repeatedly made false assertions that CHD posted false information on its Facebook page, while directing users to CHD’s direct competitors; and colluded with the federal government in the above. In recent weeks and days, Defendants Facebook and Zuckerberg have furthered—indeed escalated—all of this conduct. Specifically, as alleged in CHD’s supplemental pleading (Shreffler Dec. Ex. 1, filed concurrently):

- On February 10, 2021, five days after CHD filed its Opposition to Defendants’ Motions to Dismiss, Facebook terminated the Instagram account of Robert F. Kennedy, Jr., CHD’s founder and chairman, which at that time had over 800,000 followers. (*Id.*, Ex. 2)<sup>1</sup>
- On or about February 11, 2021, Facebook issued a widely-circulated press statement purporting to explain its cancelation of Mr. Kennedy’s Instagram account by falsely stating that Mr. Kennedy has “repeatedly shared debunked claims about the coronavirus or vaccines” on Facebook platforms (*Id.*)
- On or about February 19, Defendant Facebook *admitted* that, just as CHD has claimed throughout these proceedings, it is working hand-in-hand with the federal government to censor constitutionally protected vaccine-related speech. In particular:
- On or about February 19, a Facebook spokesperson confirmed that “the company has reached out to the White House to offer ‘any assistance we can provide’” to the federal government’s effort to block what it describes as the “spread” of vaccine “misinformation” online. Nandita Bose, *Exclusive: White House working with Facebook and Twitter to tackle anti-vaxxers*, REUTERS (Feb. 20, 2021), <https://www.reuters.com/article/health-coronavirus-white-house-exclusive-idINKBN2AK0HP>.
- At the same time, the White House acknowledged its “direct engagement” with social media companies including Facebook in “clamping down” on speech concerning vaccines that the government seeks to suppress. *Id.*
- These revelations marked the first acknowledgment by Big Tech companies such as Facebook and by government sources that “[federal] officials are *directly engaged with*

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<sup>1</sup> Instagram is a Facebook product.

*Silicon Valley in censoring social media users.”* Jesse O’Neil, *White House working with social media giants to silence anti-vaxxers*, NEW YORK POST (Feb. 19, 2021) (emphasis added).

- As part of this joint, concerted action, the White House is “specifically pushing” Facebook, Twitter, and Google to suppress and/or prevent from reaching wide audiences “chatter that deviates from officially distributed COVID-19 information.” *Id.*
- This joint, concerted scheme to censor constitutionally protected speech on medical issues of supreme public concern is confirmed by new reporting that the President’s chief of staff, Ron Klain, had previously said “the administration will try to work with Silicon Valley on the issue.” Bose, *supra*.
- On March 5, 2021, CHD was informed that Facebook published a “warning label” on a third-party user’s Facebook account which included the message: **Unfollow Children’s Health Defense** (Shreffler Dec. Ex. 3.) The warning label also implies that CHD is promulgating false and harmful information on its Facebook page, encourages users to visit the World Health Organization’s COVID pages for accurate information, and allows users to stop seeing posts from CHD by clicking on an accompanying icon. *Id.*
- The same day, March 5, 2021, Defendants filed their Replies in support of their Motions to Dismiss (Dkts. ##73-74), making no mention of any of the events and circumstances described above.

By separate motion filed herewith, CHD has requested leave under Fed. R. Civ. P. 15(d) to supplement its SAC in order to set forth these newly-occurred facts. By this motion, CHD seeks to shorten time so that its Rule 15(d) motion can be heard at the already-scheduled March 23 hearing.

### **ARGUMENT**

Civil L.R. 6-3(a) permits this Court on motion and for good cause shown to shorten time. Good cause is present here. Counsel has brought the matters raised herein to the Court’s attention promptly and has sought Defendants’ stipulation to the expedited briefing and hearing schedule proposed herein. The new facts alleged above are clearly pertinent to the subject matter of the March 23 hearing on

Defendants' Motions to Dismiss, and thus judicial economy will be served by considering CHD's Rule 15(d) motion at that time.

**CONCLUSION**

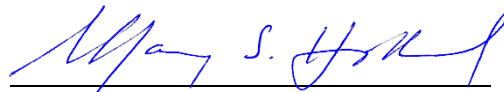
Accordingly, Plaintiff CHD respectfully requests that the Court grant its motion to shorten time pursuant to Civil L.R. 6-3(d) so that CHD's motion to supplement the pleadings pursuant to Fed. R. Civ. P. Rule 15(d) may be heard with Defendants' motions to dismiss on March 23, 2021.

Dated: March 8, 2021

Respectfully submitted,



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Founder and Chairman, Children's Health Defense



MARY S. HOLLAND  
General Counsel, Children's Health Defense



ROGER I. TEICH

Counsel for Plaintiff  
Children's Health Defense